is within the statute even though it is caused by the playful act of a fellow workman and is in no way in furtherance of the work.[14]

Furthermore, according to the English cases the *causa proxima* of the accident must be looked into by the court, and if it is seen that the conditions of the employment were the proximate cause of the injury the employee will be entitled to compensation, although some disability of the employee made him more susceptible to injury than the average workman. This view repudiates the view that the employer is not liable for the remote consequences of the disability which the workman brings with him, and bases its conclusion on the assumption that a man always brings some disability with him. Sometimes it is old age and sometimes it is of a more serious nature, but nevertheless it does not relieve the employer of liability.[15] It is doubtful if the American courts go as far as this to hold the employer liable for injuries due to remote disabilities of the employee.[16]

And to further illustrate the reasoning of the courts in regard to the construction of this phrase, it is interesting to note, that if the place and circumstances in which the workman is employed involve a greater than ordinary risk of some particular danger, as lightning for example, such an injury may be considered as caused by an accident arising out of his employment, although it may not be connected with or have any relation to the work the employee was doing.[17] It is not purposed to go into the question of what circumstances amount to an accident, but the expression is used in the Workman's Compensation Acts in the popular and ordinary sense of the word, as denoting any unforeseen and untoward event producing personal harm.

RIGHT OF THE ASSIGNEE OF THE DISTRIBUTIVE SHARE OF AN ADMINISTRATOR TO RECOVER OF THE SURETIES ON THE ADMINISTRATIVE BOND.—It is a general rule in equity that the assignee of a chose in action is vested with all of the interest of the assignor. Likewise any defense existing at the time of the assignment against

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[14] Hulley *v.* Moosburgger, *supra*. But see English case of Armitage *v.* L. & Y. Ry. Co., *supra*.

[15] Wicks *v.* Dowell & Co. (1915) 2 K. B. 225. In this case a workman employed in unloading coal from a ship, who was required in the course of his duty to stand by the open hatchway through which the coal was being brought up from the hold, was seized with an epileptic fit while at work, and fell into the hold and was thereby seriously injured. It was held by the court that the injury arose out of and in the course of the employment.

[16] Milliken *v.* A. Towle & Co., *supra*. A teamster, by reason of his occasional loss of memory due to an accident in earlier life, left the wagon which he was employed to drive and wandered about until he fell into a swamp and contracted thereby pneumonia, from which he died. It was held by the court that this was not an injury arising out of the employment. Although it was conceded that it arose in the course of the employment. But see In re Brightman (Mass.), 107 N. E. 527.

[17] Andrew *v.* Failsworth Industrial Society (1914) 2 K. B. 32.

the assignor is good against the assignee;[1] but thereafter the interest of the assignee is unaffected by any acts of the assignor,[2] and the representatives of the latter are not, after an assignment of a distributive share, entitled to be heard in the settlement of the estate.[3] The assignment by a legatee of his interest in the estate, as security for a debt, entitles him to receive in the distribution of the estate so much of the legacy as will satisfy the debt at the time of the distribution.[4] The assignee of a devisee has such an interest in the estate that he may maintain an action for the removal of the executor of the will.[5]

The purpose of an administration bond is to give protection against acts of the administrator, detrimental to the estate, and to those having an interest in the estate. That a distributee may maintain an action on the administrative bond is uncontroverted.[6] Thus, the assignee of an administrative share, being entitled to all the rights of his assignor, may maintain an action against the sureties on the bond of the administrator, where his interests are impaired by the acts of the latter.[7]

The right of an assignee of the distributive share of an administrator upon the commission of a devastavit by the latter, to recover of the sureties on the administrative bond presents a question decidedly of novel impression. That the administrator himself, as distributee, could not recover of the sureties on his bond for his own devastavit had no assignment been made, is obvious.[8] The objection opposed to a recovery by his assignee is that the assignee stands in the shoes of the assignor, therefore his claim is subject to all defenses which might be urged against the assignor. This contention loses sight of the dual character of one who is at the same time administrator of an estate and entitled to a distributive share therein. An administrator, in his individual capacity as distributee, occupies the same position as other distributees. He may therefore freely assign his interests in the estate.[9] An administrator, who also was a distributee, became indebted to the estate, and subsequently executed a deed of trust for the benefit of creditors. His distributive share was credited on his debt to the estate and was refused to the assignee on the deed of trust. The distinction must be drawn between the invalidity of a claim and a personal disability which prevents the enforcement of it by the party in in-

[1] Keim *v.* Muhlenberg, 7 Watts (Pa.) 79.
[2] Edwards *v.* Parkhurst, 21 Vt. 472.
[3] Graham *v.* Abercrombie, 8 Ala. 552.
[4] In re Estate of Phillips, 71 Cal. 285, 12 Pac. 169.
[5] Yeaw *v.* Searle, 2 R. I. 164.
[6] State *v.* Campbell, 10 Mo. 449.
[7] Jacobs *v.* Bogart, 128 Ala. 678, 29 South. 645.
[8] Dunnell *v.* The Municipal Court of the City of Providence, 9 R. I. 189.
[9] Gosnell *v.* Flack, 76 Md. 423, 25 Atl. 411. It will be observed that the deed of trust was executed after the administrator became indebted to the estate, consequently his assignee took subject to the existing equity.

terest. The assignment of a valid claim does not transfer with it, and subject the assignee to the personal incapacity of the assignor. Thus, an infant may not, by the common law, bring suit upon a claim in his own name,[10] but if he assign the claim, this personal disability does not subject his assignee to the disability in enforcing the claim. The same is true of married women at common law.[11] However, if she assign a chose in action, her common-law disability does not prevent her assignee from asserting in his own name his rights under the assignment. This distinction is further illustrated in the case of *Snyder* v. *Snyder,*[12] where an executor assigned his claim against the estate; his assignee, it was held, was not confined to the remedy provided by statute to enable the executor himself to enforce it, but could maintain an action thereon as any other creditor. In a late case, *Muller* v. *National Surety Co.,* 154 N. Y. Supp. 1906, the question of the right of the assignee of the distributive share of an administrator to bring suit on the administration bond against the sureties upon the commission of a devastavit by the administrator was brought squarely to issue, and it was held that an assignee has such a right.

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[10] Barber *v.* Graves, 18 Vt. 290; Sherman *v.* Third Avenue Railway Co., 54 N. Y. Supp. 574.

[11] Smith *v.* Bank of New England, 45 Conn. 416.

[12] Snyder *v.* Snyder, 96 N. Y. 88.